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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,575	10/05/2001	Joseph C. Walsh	P 5.78(a) CVL	4977

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Michael A. Goodwin, Esq.  
Klaas, Law, O'Meara & Malkin, P.C.  
Suite 2225  
1999 Broadway  
Denver, CO 80202

EXAMINER

MAI, TRI M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/972,575

Applicant(s)

WALSH ET AL.

Examiner

Tri M. Mai

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-12 and 14-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- T 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- T 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3. 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

→ 6 & 13

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 7, 8, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Wein (5044503). Wein teaches a method of opening and closing a container comprising, a body, a lid 164 (Fig. 38), a panel formed in at least one wall of the body portion at 155 and 160. Panels 155 and 160 are attached to the lid 164 as shown in Fig. 38 and closing the lid as shown in Fig. 38.

Regarding claim 8, Wein teaches a body portion, a lid 164, a first condition in which a panel 155 is attached to both the lid 164 and the body 149, a second condition in which portion 155 is attached to the lid 164 as shown in Fig. 38.

3. Claims 14-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Moeller (4948038). Moeller teaches a body, a lid, a hinge at portions 424 and 124, the stationary portion is adjacent to portion 124 in Fig. 6 and at portion 22 in fig. 8 (note the hinge portion at 224).

Regarding claim 20, it is noted that the hinged portion 224 is aligned with the stationary portion, i.e, portions 124 is in alignment with the stationary portion (the portion hingedly attach to portion 124). The hinge portion is misaligned when there is a force acting to open the container as shown in Fig. 6.

4. Claims 1-3, 8, 9, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Williamson (3073501). Williamson teaches body, a lid 32, a panel 41 engaging the hole.

Art Unit: 3727

5. Claims 1-3, 8, 9, 14, 15, and 17-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Fleming (2583211). Fleming teaches body, a lid 3, a panel 7 engaging the hole with hinge portions defined by fold lines 7x. it is noted that the lid in Fleming is considered a flip top as claimed.

6. Claims 1, 5, 7, 8, 12, 14, 16 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Block et al. (6152360). Block teaches a body, a lid 32, a wall 50, a panel 44 formed in at least one wall of the body portion. Block teaches the moving of the lid by opening the container causing the panel to separate from the wall,

Regarding claims 5 and 12, it is noted that the panel has a stationary portion 44 and a hinge portions 46 as shown in Fig. 4.

*Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-4, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wein in view of Wagner et al. (4565315). Wein meets all claimed limitations except for the plastic liner. Wagner teaches that it is known in the art to provide a plastic liner. It would have been obvious to one of ordinary skill in the art to provide a plastic liner in Wein as taught by Wagner to provide added protection.

9. Claims 3, 4, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Block in view of Wagner et al. (4565315). Block meets all claimed limitations except for the

Art Unit: 3727

plastic liner. Wagner teaches that it is known in the art to provide a plastic liner. It would have been obvious to one of ordinary skill in the art to provide a plastic liner in Block as taught by Wagner to provide added protection.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai  
Examiner  
Art Unit 3727

*T. Mai*

November 13, 2002